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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TRACEY C.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES
et al.,

Real Parties in Interest.

B196726

(Super. Ct. No. CK47092)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452). Albert J. Garcia, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Barry Allen Herzog, Ellen L. Bacon and Stella Rafiei for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, and Judith A. Luby, Senior Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Children's Law Center of Los Angeles and Michele Breslauer for the child.

* * * * *

INTRODUCTION

Petitioner Tracey C. is the father of T.C. (born February 2005), who is a dependent of the juvenile court. Under California Rules of Court, rule 8.452, petitioner filed a petition for extraordinary writ seeking review of the juvenile court's February 6, 2007 ruling terminating reunification services and setting a permanency planning hearing under Welfare and Institutions Code section 366.26.¹ Petitioner essentially contends there is no substantial evidence to support the court's ruling because he complied with the case plan. The Los Angeles County Department of Children and Family Services (DCFS) opposes the granting of relief. T.C., through the child's counsel, also opposes any relief. We conclude substantial evidence supports the juvenile court ruling. Accordingly, we deny the petition.

PROCEDURAL BACKGROUND AND FACTS

Petitioner, as well as DCFS, set out the complete history of the juvenile court proceedings, which does not require repetition except when necessary to address the claims for extraordinary relief.

Four-month-old T.C. was referred to the emergency room and hospitalized in June 2005 after it was discovered the child was severely

¹ All further statutory references are to the Welfare and Institutions Code.

underweight and undernourished because of parental neglect. Hospital personnel reported T.C. was “emaciated,” with “no subcutaneous fat . . . [and] muscle wasting.” T.C. also tested positive for marijuana, although results were apparently inconclusive as to the direct cause. Remarkably, neither petitioner nor T.C.’s mother, L.W., appeared to understand why the child was admitted to the hospital. The hospital was particularly concerned because mother’s four other children (from a different father) were current dependents of the court.² DCFS filed a dependency petition in June 2005 and detained T.C., who was eventually placed with her adult second cousin, S.L.

Further investigation revealed petitioner had a history of physical abuse against children. While employed by the Los Angeles Unified School District, an 11-year-old student accused petitioner of chasing him, holding him by the neck, and hitting him over and over again on the head with a basketball after the ball had accidentally bounced toward petitioner and hit him in the head. Mother indicated petitioner had admitted to her that he had hit the child. Petitioner was apparently fired due to this abuse.

Furthermore, T.C.’s four half-siblings, who had been detained from mother’s custody in December 2004 and now resided with the paternal grandparents, also said petitioner abused them before they were detained. Petitioner, while living with the mother, had hit five-year-old K.B. and four-year-old S.B. very hard with a belt on the bottoms of their feet. He had also beaten S.B. with the belt on the buttocks, sometimes with the belt folded. Eight-year-old L.B. said petitioner had tied her to a chair and then shoved a bar of soap into her mouth. Petitioner did not stop even though L.B. was swallowing the soap, choking, crying, and becoming sick. Petitioner tied S.B. to a chair and forced

² Mother is not a party to this writ proceeding.

soap down his mouth too, causing him to cry severely. L.B. and K.B. said they did not feel safe with their mother or petitioner.

The juvenile court sustained the dependency petition against petitioner in August 2005 and ordered a case plan that included parent education, individual counseling addressing the case issues, and anger management counseling. Petitioner was also granted monitored visitation twice per week. A month later, petitioner had yet to begin any aspect of the case plan and was questioning the amount of counseling he had to undergo. By March 2006, petitioner had undergone some of his anger management counseling and attended parenting classes. Nonetheless, he had yet to begin individual counseling and threatened the social worker with a lawsuit if T.C. was not given to him.

Dr. Alfred Crespo's March 2006 report of petitioner's court-ordered psychological evaluation revealed petitioner blamed the mother's abuse of the half-siblings on "drug dealers in the area" who had made "threats." Petitioner also believed the doctors who admitted T.C. into the hospital wrongly diagnosed her condition, and he denied the 11-year-old school kid's accusation that petitioner repeatedly hit him with a basketball. Psychological testing showed petitioner was significantly defensive. Dr. Crespo was very concerned that petitioner could not see the obvious fact of T.C.'s wasted, emaciated condition and also that he witnessed the mother's abuse and neglect of T.C.'s half-siblings and never intervened. Dr. Crespo indicated petitioner needed to address in individual therapy "the possibility he has too high a threshold for tolerance vis-à-vis abuse or neglect of children." He also had to be confronted in therapy with "what appears to be a pattern of defensiveness and denying of responsibility through blaming the mother, neighbors or unethical[] medical service providers for the condition [of] his daughter[]"

Two weeks later, Dr. Crespo submitted a letter to the juvenile court that was prompted by petitioner's phone call threatening Dr. Crespo with a complaint

to the medical board. Dr. Crespo indicated he had now received a copy of the sustained allegations against petitioner and noted petitioner had failed to mention the charges of serious child abuse against T.C.'s half-siblings as part of his personal history. Dr. Crespo urged the court to exercise "caution in imminently releasing the minor [T.C.] to [petitioner]."

In April 2006, the juvenile court ordered six more months of family reunification services and reiterated its order that petitioner attend individual counseling.

In August 2006, DCFS reported that petitioner had claimed to have completed his court-ordered programs. He provided a letter from a Dr. Buford Gibson, which very briefly stated petitioner "has attended his counseling regularly," "made sufficient progress," and recommended reunification because "there is no need for further counseling." (Emphasis omitted.) But the pithy letter did not contain any valuable information, did not indicate what issues had been discussed in counseling, did not describe the basis for the recommendation, and did not indicate Dr. Gibson had ever met T.C. or ever observed T.C. with petitioner.

Meanwhile, the social worker had received information about a civil case in which there was information petitioner had assaulted a family member. Petitioner claimed it was only alleged petitioner assaulted "someone" and that he was the plaintiff in the case. But the "someone" turned out to be his father, and petitioner was also a defendant as there was a cross-complaint against him. Given this new information, and the fact petitioner had attended only 10 sessions of anger management counseling, the social worker believed T.C. should remain with Cousin S.L. while petitioner continued his counseling.

On August 11, 2006, mother gave birth to a baby girl, A.W., while incarcerated. Petitioner was the baby's father. Based upon the mother's

incarceration and the dependency cases filed against T.C. and the half-siblings, A.W. was detained and placed with M.W., an aunt who had a foster care license.

In September 2006, DCFS reported it was having difficulty assessing petitioner's home because petitioner would not provide his address, saying his lawyer told him he did not have to do so. Petitioner would also not discuss his participation in programs. DCFS had to file a request for an order that would get petitioner's cooperation. According to the social worker, petitioner had been erratic and oppositional in his contacts with various DCFS employees. The social worker described petitioner's "propensity for accusatory statements, delusional thinking and ongoing rumination over alleged shortcomings of [DCFS]"

Petitioner also appeared to have problems with visitation. It was difficult to find a good time for petitioner's visits because of his erratic schedule. When he visited, petitioner did not appear to have much patience with T.C. and A.W. He would leave tiny A.W. unattended on the edge of a sofa, and he appeared not to know how to handle T.C. T.C. would fall on the floor and petitioner would just leave her there. T.C. and A.W. were doing very well in the care of S.L. and M.W. T.C. visited often with her aunt, M.W., and sister, A.W., and developed a close relationship with both of them. S.L. did not believe petitioner was ready to take care of them and she was willing to adopt both girls.

Petitioner's therapist, Dr. Gibson, had died in an automobile accident, and a therapist from the same agency was perplexed why Dr. Gibson had so suddenly changed his recommendation to say petitioner should immediately take custody of T.C. Nothing in Dr. Gibson's notes indicated if the therapy had dealt in depth with petitioner's history of violence toward children and adults, his failure to accept responsibility for DCFS' involvement, and his defensive and secretive behavior. The social worker was also concerned because in 1994 Dr. Gibson had

been suspended for 10 years from participating as a provider in federal programs after being convicted of felony grand theft and tax evasion.

The facilitator for the parenting classes the parents had attended during the early part of the case said petitioner had come with mother until she was incarcerated. But it was clear that when petitioner was there he “controlled everything” and mother “looked extremely terrified to do or say anything. It was clear that he controlled their lives.”

Petitioner’s anger management class facilitator said petitioner had completed 10 classes, but he had discussed only his relationships and challenges in the workplace. The facilitator knew nothing about the dependency case, even though the entire class has been told to bring in the paperwork showing the reason they had been referred to the program. Therefore, it was impossible to tailor the class to petitioner’s needs, as would have been done if the information had been known.

In October 2006, DCFS reported the social worker had finally been able to visit petitioner’s home. Petitioner did not have all of the equipment needed for the children and claimed he had given it to the caretakers, who denied petitioner had given them those things. The social worker felt petitioner spent a lot of time trying to mislead, omit and deny the events that had necessitated juvenile court involvement. In November 2006, the social worker set up a new visitation plan because the old plan, designed around petitioner’s schedule, was getting the children sick by having them stay out too late in the cold.

On December 20, 2006, DCFS reported petitioner had enrolled in a new outpatient program of anger management and parenting classes and had been attending regularly. The new visitation plan had been in effect since November 19, but the social worker observed petitioner still appeared not to care about the children’s welfare and their need to be in bed at a reasonable hour, thinking only of his own schedule. Petitioner continued to threaten to sue DCFS and the

juvenile court. He also called A.M., S.L.'s sister, at 10:00 p.m. one evening, saying he believed S.L. and M.W. were plotting against him and letting A.M. know he was outside S.L.'s house, watching. Petitioner's anger management counselor, Rose Ndisang, stated she did not recommend that T.C. be returned to petitioner because he still had to deal with his own issues. S.L. remained committed to adopting T.C., as she was likely to be adopted. T.C. had a stable routine in S.L.'s home and was very attached to her, calling her "mama."

In January 2007, Counselor Ndisang indicated petitioner had attended 10 parenting and 10 anger management classes. The counselor said petitioner showed a great deal of denial. He was gradually "beginning to acknowledge his role in the abuse," but argued a lot and still needed more counseling.

The section 366.22 hearing took place on February 2, 2007, almost 20 months into the case. The DCFS social worker testified petitioner had completed some programs, and that it was the second time petitioner had attended parenting and anger management classes; but petitioner's counselor recommended more reunification services, not that T.C. be returned to petitioner's care. As to visitation, the social worker testified T.C. tended to have tantrums around petitioner. When petitioner was caring for A.B., he completely failed to supervise T.C., presenting a safety issue.

Ms. Ndisang, the parenting and anger management counselor, stated she believed petitioner should continue in counseling and that he had yet to finish his anger management classes. She noted there were many parenting issues of which petitioner was unaware. Surprisingly, Ms. Ndisang testified she thought T.C. should go home with petitioner. But further questioning revealed Ms. Ndisang was not fully aware of many facts of the case, including petitioner's abuse of the 11-year-old boy with the basketball, and he never acknowledged his abuse of T.C.'s four half-siblings.

Lory Love, a drug and alcohol counselor and the facilitator for petitioner's parenting classes, said petitioner attended the classes six or seven times. While Mr. Love thought petitioner was ready to take custody of the child, he had only three one-on-one sessions with petitioner.

Petitioner testified he had a good relationship with T.C., who called him "daddy." He also testified he had attended individual counseling with Dr. Gibson.³ Petitioner said he had located a 24-hour daycare service, that his girlfriend could take T.C. to daycare, and that he was ready to take T.C. into his home.

After considering all of the evidence and argument of counsel,⁴ the juvenile court found petitioner had failed to make substantive progress in the court-ordered case plan and that it would be detrimental to T.C. to return her to petitioner's care. The court specifically found petitioner's counselor simply did not know enough about petitioner's case to provide an opinion, and that petitioner had a "long ways to go." The court said petitioner had never acknowledged the problems that had caused T.C.'s detention. The court told petitioner that the time limit on this case was essentially six months and that it could not provide further services. The court urged petitioner to remain in therapy, terminated services, and scheduled a section 366.26 hearing.

Petitioner filed a timely writ petition challenging the ruling.

³ At this point, counsel for DCFS reminded the juvenile court that, subsequent to petitioner's counseling with Dr. Gibson, the court had ordered him to attend further individual counseling.

⁴ During argument, counsel for T.C. joined with DCFS in asking the court to terminate reunification services and schedule a hearing under section 366.26. T.C. has joined in DCFS' opposition to petitioner's petition for an extraordinary writ and asks that we deny the petition.

PETITIONER'S CONTENTION

Petitioner contends the juvenile court erred because there was no substantial evidence supporting its conclusion that he failed to comply with the case plan or that T.C. would be at risk if returned to his care. We disagree and deny the petition.

DISCUSSION

1. Standard of Review

“The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent’s interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.)

Typically, when a child is removed from a parent, the child and parent are entitled to 12 months of child welfare services in order to facilitate family reunification, which may be extended to a maximum of 18 months. (§ 361.5, subd. (a).) However, when the removed child is under three years of age court-ordered services may be limited to six months. (§§ 361.5, subd. (a)(2); 366.21, subd. (e); see *Abraham L. v. Superior Court* (2003) 112 Cal.App.4th 9, 13-14.)

Section 366.22 provides that within 18 months after a dependent child was originally removed from the physical custody of his parent, a permanency review hearing must occur to review the child’s status. At the hearing, the court must order the child’s return to the physical custody of his parent unless the court finds, by a preponderance of the evidence, that the return of the child to the parent would create a substantial risk of detriment to the child’s safety,

protection, or physical or emotional well-being. In making its determination, the court is required to consider the efforts or progress, demonstrated by the parent, and the extent to which the parent took advantage of the services provided. *The failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs is prima facie evidence that the return would be detrimental.* (§ 366.22, subd. (a).)

The mere completion of the technical requirements of the reunification plan – such as attending counseling sessions and visiting the children – is only one consideration. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) The juvenile court must also consider the progress the parent has made towards eliminating the conditions leading to the child’s placement out of the home. (*Ibid.*) In making its determination, the juvenile court must weigh recent efforts against previous failings to evaluate the likelihood that the parent will maintain a stable existence for the remainder of the child’s life. (*In re Brian R.* (1991) 2 Cal.App.4th 904, 918.)

The juvenile court’s determination is reviewed for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) “Substantial evidence” means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) In reviewing the evidence, we must construe all evidence in the light most favorable to the juvenile court’s determination, resolve all conflicts in support of the court’s determination, and indulge all inferences to uphold the court’s order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Michael G.* (1993) 19 Cal.App.4th 1674, 1676; *In re Rocco M., supra*, 1 Cal.App.4th at p. 820.) The trial court’s exercise of discretion will not be disturbed unless it is exercised in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*In re Brequia Y.*

(1997) 57 Cal.App.4th 1060, 1068; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

2. *Substantial Evidence Supports the Juvenile Court's Determination*

Petitioner argues his “compliance with court orders, his meaningful progress in therapy and his consistent and loving visits with T.C. were ample evidence from which the court should have returned T.C. to the home of the father.” We reject this contention because substantial evidence supports the juvenile court’s conclusion that petitioner failed to make substantive progress in eliminating the conditions which led to the court’s involvement.

Petitioner has a history of physical abuse and neglect of children, and throughout the case he continued to deny these problems or blamed the abuse and neglect on someone else. His denial was so entrenched that the results of a psychological test administered by Dr. Crespo were invalidated. Nonetheless, Dr. Crespo was very clear in his evaluation and recommendation that petitioner had to address in individual counseling his high threshold for tolerance of abuse or neglect of children and that he had to be confronted in such counseling with his pattern of defensiveness and denying responsibility through blaming others. Substantial evidence supports the juvenile court’s finding that petitioner never truly made progress in resolving these important issues.

By February 2006, eight months into the case, petitioner was attending parenting classes and participating in anger management sessions, but he was still fighting against having to attend individual counseling. In April 2006, after the juvenile court received Dr. Crespo’s evaluation, it reiterated its order that petitioner attend individual counseling. Rather than follow up on numerous referrals provided by the DCFS social worker, petitioner chose Dr. Gibson and attended only 13 sessions with him. Given Dr. Gibson’s sudden and unexplained change of recommendation that petitioner terminate all therapy and that T.C. be

immediately given to him without condition, the lack of any factual basis for the recommendation, as well as no evidence that Dr. Gibson addressed the central case issues Dr. Crespo indicated petitioner had to face in individual counseling, the juvenile court was justified in seriously questioning the credibility of Dr. Gibson's recommendation or discounting it altogether.

We acknowledge that petitioner attended an anger management program and parenting classes, which he apparently did twice. Nonetheless, during his first course of anger management, petitioner avoided disclosing why he was there, sharing workplace problems only. And, just a few weeks prior to the February 2007 hearing, petitioner had still failed to make sufficient progress in counseling. Petitioner's most recent anger management counselor, Rose Ndisang, specifically reported petitioner was just starting to make progress by "*beginning* to acknowledge his role," (italics added) but that he continued to argue a lot, had not finished his counseling or classes, and "is still in need of more counseling."

Remarkably, Ms. Ndisang did testify during the February hearing that she thought T.C. should be returned to petitioner. Not only does this recommendation appear to be inconsistent with her recent reports to the court, but the record shows Ms. Ndisang was not fully aware of many facts of the case, including petitioner's abuse of the 11-year-old boy with the basketball, and she indicated he never acknowledged his abuse of T.C.'s half-siblings, petitioner continuing to deny there was any abuse. And, she was never aware of Dr. Crespo's evaluation, which she said would have been helpful, petitioner never bothering to give it to her.

Lory Love, the facilitator for petitioner's parenting classes, did briefly testify at the hearing that petitioner be given custody of T.C. But he also indicated petitioner had attended only six or seven classes and that he had only three one-on-one sessions with petitioner. There was no indication Mr. Love

knew anything about the dependency case. His opinion carried little weight, if any.

“It is axiomatic that an appellate court defers to the trier of fact on [factual] determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.] ‘Issues of fact and credibility are questions for the trial court.’ [Citations.]” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.) After hearing Ms. Ndsing and Mr. Love’s testimony, the juvenile court found they did not know enough about petitioner’s case to reliably decide whether petitioner had made progress and T.C. should be trusted in his care. The court further found petitioner had “a long ways to go” and that he was not yet ready to keep T.C. safe. Based upon the evidence before it, the juvenile court was justified in its findings and conclusion.

According to section 366.22, subdivision (a), “The failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return [of the child] would be detrimental.” Petitioner showed a consistent pattern of either failing to entirely disclose the facts and issues of his case with his counselors and therapists or selectively giving them only partial information, thereby preventing his ability to make substantive progress. As the juvenile court aptly stated, petitioner was his “own worst enemy.” Petitioner’s failure over a 20-month period to make substantive progress by not addressing his anger, physical abuse and neglect of children, as well as his recalcitrant denial of the circumstances that made the juvenile court’s involvement necessary, showed petitioner could not yet be trusted to keep T.C. safe and that she was, at the time of the February hearing, at risk in his care.

Because there is substantial evidence in the record to support the juvenile court's determination and the court did not abuse its discretion in denying further reunification services, we deny the petition.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. This opinion is final forthwith as to this court under rule 8.264 of the California Rules of Court.

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FLIER, J.

We concur:

COOPER, P. J.

RUBIN, J.